

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOYCE HIPPS,

Plaintiff,

vs.

LVNV FUNDING LLC,

Defendant.

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Case No. 4:12-CV-01297-DDN

DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW Defendant LVNV Funding LLC (“Defendant”), and, for its answer to the Complaint filed by the Plaintiff, admits, denies, and avers as follows:

I. INTRODUCTION

1. Responding to the allegations in paragraph 1, Defendant agrees with the Plaintiff’s characterizations of the case, but denies liability and denies all other allegations in paragraph 1.

II. JURISDICTION AND VENUE

2. Paragraph 2 contains legal conclusions that are not subject to admission or denial; to the extent a response is required, Defendant denies the same.

3. Defendant admits the allegations in paragraph 3.

4. Defendant admits the allegations in paragraph 4.

III. PARTIES

5. Defendant is without knowledge or information sufficient to either admit or deny the allegations in paragraph 5, and therefore denies the same.

6. Paragraph 6 contains legal conclusions that are not subject to admission or denial; to the extent a response is required, Defendant denies the same.

7. Defendant admits the allegations in paragraph 7, except that the last sentence of paragraph 7 is a legal conclusion not subject to admission or denial; to the extent a response is required, Defendant denies the same.

8. Defendant admits that a portion of its business relates to the collection of debts owed by Missouri residents. Further responding, Defendant admits that it will file a lawsuit against a consumer if necessary to collect a debt.

FACTS COMMON TO ALL COUNTS

9. Responding to the allegations in paragraph 9, Defendant admits that the exhibit attached to Plaintiff's Complaint is an accurate copy of a lawsuit filed by Defendant; that the exhibit speaks for itself, and no response is required. To the extent a response is required Defendant denies the allegations in paragraph 9.

10. Responding to the allegations in paragraph 10, Defendant admits that the court records of the Circuit Court of Franklin County, Missouri reflect that Plaintiff filed an answer in the lawsuit identified in paragraph 9 of Plaintiff's Complaint. Defendant is without knowledge or information sufficient to either admit or deny the remaining allegation in paragraph 10, and therefore denies the same.

11. Defendant denies the allegations in paragraph 11, except that Defendant admits the lawsuit identified in paragraph 9 of Plaintiff's Complaint was dismissed on June 18, 2012.

COUNT I

Alleged Violation of the Fair Debt Collection Practices Act (15 U.S.C. § 1692, *et seq.*)

12. Defendant incorporates by reference paragraphs 1 through 11 above.

13. Defendant denies the allegations in paragraph 13, including all of its subparts.

COUNT II

Malicious Prosecution

14. Defendant incorporates by reference paragraphs 1 through 13 above.
15. Defendant denies the allegations in paragraph 15.
16. Defendant denies the allegations in paragraph 16.
17. Defendant denies the allegations in paragraph 17.
18. Defendant denies the allegations in paragraph 18.
19. Defendant denies the allegations in paragraph 19.

AFFIRMATIVE DEFENSES

1. The Petition fails to state a claim upon which relief may be granted.
2. Defendant acted in good faith with reasonable grounds to believe that its actions were not in violation of law, including the FDCPA, and the actions were unintentional and/or were the result of a bona fide error as defined in the FDCPA.
3. Plaintiff's claims may be barred, in whole or in part, to the effect Plaintiff failed to mitigate her damages, the existence of which damages Defendant specifically denies.
4. To the extent it is determined that Defendant violated the FDCPA, which Defendant specifically denies, any award of damages or attorneys' fees would be improper because any such violation would be *de minimis*, inconsequential and not material.
5. At all times Defendant had a good faith basis and probable cause to institute the underlying collection action.
6. Defendant reserves the right to add further affirmative defenses as discovery and litigation of this case progresses.

WHEREFORE, having fully responded to the allegations contained in the Complaint, Defendant prays that this Court dismiss the claims brought by Plaintiff with prejudice to future actions, at Plaintiff's costs, and for such other and further relief as the Court deems just and proper.

DATED this 5th day of September, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically with the United States District Court for the Eastern District of Missouri, Eastern Division, this 5th day of September, 2012, with notice of case activity generated and sent to Plaintiff's attorney:

Dennis Devereux

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/s/ Joshua C. Dickinson